

Before the
Federal Communications Commission
Washington, D.C. 20554

2000 DEC 22 P 1:51

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations.)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle, and)	
Woodward, Oklahoma))	

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 13, 2000

Released: December 22, 2000

By the Chief, Allocations Branch:

1. At the request of FM 92 Broadcasters, Inc., licensee of Station KMZE, Channel 221C3, Woodward, Oklahoma ("FM 92"), and Ralph Tyler ("Tyler"), the Commission has before it the Notice of Proposed Rule Making and Orders to Show Cause, 13 FCC Rcd 25352 (1998), proposing the allotment of FM channels at Mooreland and Tuttle, Oklahoma, as each community's first local aural service, as well as accommodating changes at Alva, Tishomingo and Woodward, Oklahoma. Comments were filed by FM 92, Tyler and Classic Communications ("Classic"), licensee of Station KWFX, Woodward, Oklahoma. Reply comments were filed by Chisholm Trail Broadcasting Company, Inc. ("Chisholm Trail"), licensee of Station KNID (formerly KXLS), Channel 259C1, Alva, Oklahoma, and Tyler.¹

2. At the request of FM 92, the Notice proposed the allotment of Channel 283C1 to

¹ After the record closed, the following additional pleadings were filed: (1) "Supplement to Reply Comments" filed by Chisholm Trail on November 12, 1998; (2) "Statement for the Record" filed by Ralph Tyler on November 18, 1998; (3) "Opposition to Supplement for the Record" filed by Chisholm Trail on November 25, 1998; (4) Supplemental Comments of Classic Communications, Inc. to Address Reply Comments" filed December 9, 1998; (5) "Motion to Accept Response" and "Response of Ralph Tyler" filed on December 14, 2000; (6) "Opposition to Motion to Accept Response and Response of Ralph Tyler" filed December 23, 2000, by Chisholm Trail; (7) "Reply to Opposition" filed by Ralph Tyler on January 7, 1999; (8) "Motion to Hold in Abeyance" filed by Chisholm Trail on April 1, 1999; (9) "Opposition to Motion to Hold in Abeyance" filed by Ralph Tyler on April 13, 1999; (10) Reply to Opposition to Motion to Hold in Abeyance" filed by Chisholm Trail on April 22, 1999; (11) "Supplement to Motion to Hold in Abeyance" filed by Chisholm Trail on May 14, 1999. These pleadings concern the suspension of broadcasting by Station KTSH and the activation of broadcasting by Station KAZC and whether Tyler had materially represented the facts surrounding these events to the Commission. In pursuing these issues, Chisholm Trail filed an "Informal Objection and Request to Revoke Program Test Authority" with respect to the license application of South Central Oklahoma Christian Broadcasting, Inc. ("South Central") (BLED-981002KA) as well as a formal complaint against both stations with the Commission's Enforcement Division requests the institution of a forfeiture and revocation proceeding against both parties. A resolution of these issues in the context of this proceeding is not necessary prior to the resolution of this proceeding in light of our decision herein.

Mooreland and the substitution of Channel 228A for Channel 261C1 at Woodward, Oklahoma, and the modification of Station KWFX's license to specify operation on the Class A channel.² At the request of Tyler, licensee of Station KTSH, Tishomingo, Oklahoma, the Notice also proposed the reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, as the community's first local aural service, and the modification of Station KTSH's license accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules.³ However, because Station KTSH was the only operating aural station at Tishomingo, Tyler was requested to provide further information demonstrating why the public interest would be served by removing the community's sole local aural service in order to provide the same service to Tuttle. To accommodate the Tuttle allotment, the Notice also proposed the substitution of Channel 292C1 for Channel 261C1 at Woodward, the modification of Station KWFX's license to specify operation on the alternate Class C1 channel, the substitution of Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and the modification of Station KNID's license to specify operation on the higher powered channel.

3. As stated in the Notice, Station KWFX's license for Channel 228A at Woodward was modified to specify operation on Channel 261C1 pursuant to the Report and Order in MM Docket 90-286, and the station was granted a construction permit for that channel on April 22, 1992. However, at the request of the then licensee, Fuchs Communications ("Fuchs"), the construction permit was forfeited and cancelled on September 2, 1994.⁴ Thus, at the time these petitions were filed, Station KWFX was continuing to operate on Channel 228A, but prior to the issuance of the Notice, Classic filed an application for Channel 261C1. However, Classic's application contains a request that it be allowed to continue operating with Class A power of 6 kW, at its current location, pending the filing of another application specifying a new antenna and transmitter site which would allow an increase in power to 25 kW, stating that it would file such an application "as soon as a new location becomes available and as soon as finances allow." Therefore, since Classic did not propose to operate with minimum Class C1 facilities, we alternatively proposed the substitution of either Channel 228A or Channel 292C1 at Woodward, and the modification of Station KWFX's license to specify either the Class A or C1 channel. Thus, the two allotment plans under consideration herein are:

² FM 92 had originally proposed the allotment of Channel 261C1 to Mooreland along with the downgrade of Station KWFX at Woodward from Channel 261C1 to Channel 228A. However, in response to the alternate allotment proposal submitted by Tyler, the Notice instead proposed the allotment of Channel 283C1 at Mooreland and either Channel 292C1 or Channel 228A at Woodward. The proposed allotment of Channel 283C1 at Mooreland resolved the conflict between Tyler's proposed Channel 260C1 at Alva and FM 92's proposed Channel 261C1 at Mooreland.

³ Section 1.420(i) of the Commission's Rules permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

⁴ On March 7, 1996, the Commission granted the voluntary assignment of license of Station KWFX from Fuchs to Classic.

Option I

<u>City</u>	<u>Channel No.</u> <u>Present</u>	<u>Proposed</u>
Alva, Oklahoma	259C1, 278C1, 289C2, 296C3 ⁵	260C1, 278C1, 289C2, 296C3
Mooreland, Oklahoma --		283C1
Tishomingo, Oklahoma 259C3	--	
Tuttle, Oklahoma	--	259C3
Woodward, Oklahoma	221C3, 240A, 261C1, 266C, 272A	221C3, 240A, 266C, 272A, 292C1

Option II

Alva, Oklahoma	259C1, 278C1, 289C2, 296C3	260C1, 278C1, 289C2, 296C3
Mooreland, Oklahoma	--	283C1
Tishomingo, Oklahoma 259C3	--	
Tuttle, Oklahoma	--	259C3
Woodward, Oklahoma	221C3, 240A, 261C1, 266C, 272A	221C3, 228A, 240A, 266C, 272A

4. Classic filed comments stating that circumstances have now changed and it desires to operate Station KWFX, as a Class C1, on Channel 261. However, it states that it has no objection to the substitution of Channel 292C1 for Channel 261C1, and the modification of Station KWFX's license accordingly, as long as Tyler and/or FM 92 reimburse it for the reasonable and prudent expenses relating to the change in power and the change of channel if Option I is adopted.

5. FM 92 supports the adoption of Option II, that is, the allotment of Channel 283C1 to Mooreland, and Channel 228A to Woodward and reiterates its intention to apply for the Mooreland channel, if allotted. However, it requests that a site restriction of 29 kilometers southwest (coordinates 36-16-06 NL; 99-26-56) be imposed in lieu of the 9.3 kilometer (5.8 mile) south site restriction (coordinates 36-21-24 NL; 99-13-37 WL) proposed in the Notice. FM 92 states that use of the alternate transmitter site would enable the Mooreland station to use an existing tower near Sharon, Oklahoma. In addition, it states that Channel 228A could then be allotted to Woodward and Station KWFX could operate with Class A, C3 or C2 facilities from its existing site or as a Class C1 with a minor site restriction of 5.0 kilometers west northwest of its present site. Further, FM 92 states that it had pledged in its petition to reimburse the then licensee, Fuchs, for its reasonable and prudent expenses in relocating from Channel 261C1 to Channel 228A. However, since the station has never commenced operation on the upgraded channel, it believes that there should be no or only minimal

⁵ Channel 296C3 was allotted to Alva, effective August 28, 2000. See, Report and Order, MM Docket 00-7, 15 FCC Rcd 12729 (2000), 65 FR 45722, July 25, 2000.

reimbursable expenses. However, should Station KWFX's license be modified to specify operation on Channel 292C1, it pledges to reimburse Classic for its reasonable and prudent relocation expenses. FM 92 also submits that Tyler should share in the reimbursement to Station KWFX since it is also a benefitting party to the allotment of Channel 292C1 in lieu of Channel 261C1 at Woodward. In support, it cites Cordele, Dawson and Montezuma, Georgia, 8 FCC Rcd 7672 (1993). FM 92 states, however, that it should not be required to share in the reimbursement to Chisholm Trail for the costs associated with the substitution of Channel 260C1 for Channel 259C1 at Alva. The substitution at Alva is required only to accommodate Tyler's request to reallocate Channel 259C3 from Tishomingo to Tuttle and thus will not benefit FM 92 in any way.

6. Tyler supports the adoption of either option since they both result in the reallocation of Channel 259C3 to Tuttle and the concurrent modification of Station KTSH's license. Tyler reiterates that the Commission did not question Tuttle's status as a community for allotment purposes nor require him to provide a Tuck showing demonstrating that Tuttle is a community independent of the Oklahoma City Urbanized Area and thus deserving of a first local service preference.⁶ Further, he states that the Commission's concern that the reallocation of Channel 259C3 to Tuttle would result in the loss of Tishomingo's sole local aural service is now moot. Tyler states that after the filing of his petition for rule making, noncommercial educational FM Station KAZC began operating on Channel 202A, pursuant to program test authority.⁷ Tyler also reiterates his intention to reimburse the licensee of Station KNID, Alva, as well as the licensee of Station KWFX, if the Commission determines that the Woodward licensee is entitled to such reimbursement, for the reasonable and prudent costs associated with their respective channel changes. Therefore, Tyler asserts that the reallocation of Channel 259C3 to Tuttle, a community of 2,807 people, will further the Commission's allotment priorities and result in a preferential arrangement of allotments because Tuttle would receive its first local aural service rather than Tishomingo having two such services.⁸ In addition, he states the reallocation will enable Station KTSH to provide service to an additional 731,219 people with the entire loss area continuing to receive at least five fulltime aural services.

7. In response to the Order to Show Cause, Chisholm Trail states that Tyler's proposal to relocate Station KTSH from Tishomingo to Tuttle should be denied as it would not result in a preferential arrangement of allotments. It contends that the deletion of Channel 259C3 from Tishomingo, the seat of Johnston County, would result in the loss of the community's, and the county's,

⁶ The proposed allotment of Channel 259C3 to Tuttle would result in only 23% of the Oklahoma City Urbanized Area being within Station KTSH's 70 dBu contour. See, Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁷ South Central Oklahoma Christian Broadcasting, Inc., permittee of Station KAZC, filed a letter dated September 29, 1998, stating that it had begun on-air operation on that date and filed their license application to cover the construction permit on October 2, 1998 (BLED-19981002KA).

⁸ The Commission's allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

sole local aural service. It states that even if noncommercial educational Station KAZC commences operation at Tishomingo, the Commission's Rules do not require such noncommercial educational stations to provide any level of service to their community of license.⁹ In fact, Chisholm Trail states that Station KAZC, with its limited operating power and restricted transmitter site, will not provide a city-grade (70 dBu) signal to any portion of the community and its 60 dBu contour will encompass only 23% of the population currently receiving service from Station KTSH.¹⁰ It recognizes that there is not an absolute ban on the removal of a community's sole local service but points out that the Commission found the removal of a sole local service would presumptively disserve the public interest and therefore would consider such an action only where rare circumstances were present, such as the provision of a first reception service to a significantly sized population. In this case, Station KTSH could provide Tuttle, population 2,807 people, with its first local aural service but would not provide anyone with a first or second fulltime reception service. Chisholm Trail points out that Tuttle, approximately 95 miles from Tishomingo, is located near Oklahoma City and presently receives service from twenty-six radio stations, twenty of which encompass the community within their 70 dBu contour. Therefore, it argues that Tyler's proposed reallocation does not meet the criteria set forth by the Commission which would warrant the removal of Tishomingo's sole local aural service.

8. Chisholm Trail submits that the removal of Station KTSH from Tishomingo also would have a negative impact on the ability of the residents to receive local news, weather and public affairs programming. To this end, Chisholm Trail appends letters from the mayor of Tishomingo, the President of the Johnston County Chamber of Commerce, and the Pastors of several local churches, stating that Station KTSH provides a needed service to the community and thus its retention as a Tishomingo station. It also points out that this is not the first time that Tyler has sought to move an existing station from a larger community to a smaller one near Oklahoma City, to wit, the removal of Station KKNB, Channel 227C1, from Ada to Newcastle, Oklahoma, which is located approximately 15 miles from Tuttle.¹¹

9. In reply comments, FM 92 reiterates its support for the allotment of Channel 283C1 to Mooreland. It also argues that Station KWFY should be modified to specify operation on Channel

⁹ Pursuant to the Report and Order in MM Docket 98-93, noncommercial educational FM stations operating on channels within the reserved portion of the band (201-220) will be required to provide a predicted 60 dBu signal to at least 50% of the population within the community. See, 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, FCC 00-368, released November 1, 2000.

¹⁰ Chisholm Trail states that Station KAZC, Channel 202A, cannot increase power beyond its authorized 1.75 kilowatts without causing interference and/or becoming short-spaced to Station KNTU, Channel 201C1, Denton, Texas. As a result, it states that Station KAZC's 70 dBu contour will encompass only 15% of the population currently served by Station KTSH (1,486 vs. 9,796) and that Station KAZC's 60 dBu contour will encompass only 8,387 persons vs. 35,854 persons. Further, if Station KTSH completes the change in facilities pursuant to its outstanding construction permit (BPH-19970220IA), the station will increase its coverage to serve 14,449 people within its 70 dBu contour and 56,949 people within its 60 dBu contour.

¹¹ See, Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (Allocations Branch 1996).

228A rather than Channel 292C1. FM 92 states that Classic has never taken the necessary steps to operate as a Class C1 on Channel 261, although authorized to do so many years ago.¹² In fact, it points out that although Classic did finally submit an application on August 11, 1997, to move from Channel 228A to Channel 261, the application specified only Class A facilities. While Classic stated therein its intention submit another application specifying a new transmitter site and an increase in power to 25 kW as soon as a new location is available and finances allow, no such application has yet been filed. FM 92 again points out that Station KWFX can operate on Channel 228 or Channel 261, at its present location, with Class A, C3 or C2 facilities but must relocate its transmitter site to operate with Class C1 facilities on either channel. Therefore, it concludes that its failure to upgrade its facilities at all clearly demonstrates its financial inability to do so. FM 92 also contends that Classic has not committed to making the site change necessary to operate with Class C1 facilities. Instead, it says that Classic's statement that it "does not object" to the modification of its license to Channel 291C1 is not an unequivocal pledge to apply for the channel. Thus, it fears that any channel allotments made herein which are dependent upon Station KWFX moving its transmitter site could be delayed because Classic must advance the funds which it says it presently does not have. Finally, if Station KWFX is modified to Channel 292C1, FM 92 says the Commission should determine whether the station is entitled to any reimbursement in light of the relinquishment of the Channel 261C1 construction permit and, if so, whether Tyler should be solely responsible for these reimbursable expenses. However, FM 92 states it is willing to share in the reimbursement if the Commission determines that it is warranted.

10. Chisholm Trail, in its reply comments, contends that Tyler, in an attempt to gain another Oklahoma City station, committed acts of deception and made material misrepresentations to the Commission concerning the operation of both Station KTSH and KAZC. Chisholm Trail states that Tyler acquired Station KTSH from South Central Oklahoma Christian Broadcasting, Inc. ("South Central") in 1996 after it had been unable to put the station on the air during the three years it was the permittee. In 1997, Tyler filed a construction permit application specifying a new site, which is in an isolated and not easily accessible area, in order to comply with the change of community requirement that the existing and proposed allotments be mutually exclusive. In this regard, Chisholm Trail states that Tishomingo and Tuttle are located 153.59 kilometers (95.43 miles) apart, using each community's center city coordinates, and thus meet the required 153 kilometer (95 mile) separation for co-channel Class C3 stations. Further, using the coordinates of Station KTSH's present site, there is an area of over 50 square kilometers to the north and west of Tuttle where a fully spaced co-channel station could be located. In fact, it states that only a minor site restriction of 2.34 kilometers northwest would be required to permit the allotment of Channel 259C3 to both communities as well as allowing the new Tuttle station to serve 804,735 people instead of the 767,353 people projected by Tyler.

Therefore, Chisholm Trail urges that the Commission not allow Tyler to manufacture a short-spacing merely by selecting a preferred antenna site 9.3 kilometers east of Tuttle.

11. The Notice requested Tyler to provide further information as to how the public interest

¹² See, Woodward, Oklahoma, 5 FCC Rcd 6628 (1990).

would be served by removing Tishomingo's sole local aural service in order to provide the same service to Tuttle, a community already well served by Oklahoma City area stations. To avoid this issue, Chisholm Trail contends that Tyler voluntarily took Station KTSH off the air on September 28, 1998, while telling the Commission the station had suffered "antenna failure," while the following day Station KAZC commenced program tests from the same tower, and at the same location where Station KTSH's transmission line had been plugged into its antenna. Thus, Tyler could now claim that his proposal would not result in the removal of Tishomingo's sole local service.¹³ Therefore, because of Tyler's attempt to have its proposal granted by defrauding the Commission, it urges that the reallocation of Channel 259C3 from Tishomingo to Tuttle be denied and that program test authority for Station KAZC be revoked.¹⁴ However, should these actions not be taken, it asserts that Tyler's proposal should be denied based on its failure to comply with the requirements of Section 1.420(i) of the Commission's Rules.

12. Tyler, in response, submits that Chisholm Trail has not set forth any reason as to why its Alva Station KNID should not be modified to Channel 260C1, stating that the station can operate just as efficiently on Channel 260C1 on as its present Channel 259C1. Tyler does not dispute that Station KAZC does not provide a 70 dBu signal over all of Tishomingo. However, while pointing out that there is no Commission requirement that a station operating within the reserved band provide 70 dBu service to its community of license, he states that the actual Station KAZC signal is described as excellent. Tyler does disagree that a short-spacing to Station KNTU, Channel 201C1, Denton, Texas, prevents Station KAZC from locating its transmitter closer to Tishomingo. He believes that Chisholm Trail's study is based on the mileage separation requirements for stations operating in the non-reserved portion of the band (Section 73.207) instead of the contour protection standards (Section 73.509) which are applicable to stations operating within the reserved portion of the band. When correctly computed, Tyler states that Station's KAZC's transmitter could be located in downtown Tishomingo, as evidenced by the showing contained in the station's construction permit application. However, Tyler says that Station KAZC chose to locate on an existing transmission tower to avoid the need for a new site and the cost of building a new tower.

13. Tyler concludes that the proposed reallocation of Station KTSH should be granted because: (1) Tishomingo will not lose its sole local aural service since such service will be provided by Station KAZC, which is now on the air;¹⁵ (2) the area and population which will lose service if Channel

¹³ According to Chisholm Trail, an investigation by William H. Nolan, Broadcast Technical Consultant, Nolan Broadcast Services, found that Station KTSH was voluntarily taken off the air and the transmitter retuned by station engineer Randy Mullinax so that Station KAZC could begin operation under program test authority. He also states that the two stations have never been on the air simultaneously and Station KTSH cannot resume broadcasting without installing a new transmitter equipped with notch filtering for both stations to avoid unsatisfactory interference to both stations and the installation of a new transmission line.

¹⁴ Chisholm Trail also requested that the Commission issue an order directing Tyler and South Central to show cause why their respective authorizations for Stations KTSH and KAZC should not be designated for a revocation hearing.

¹⁵ Tyler states that the Commission announced the acceptance of Station KAZC's license application (BLED-19981002KA) by Report No. 24350, p. 6, released October 20, 1998.

259C1 is reallocated to Tuttle will continue to receive five fulltime aural services; and (3) Station KTSH will be able to increase its service from 36,134 people to 767,353 persons. Based on Classic's expressed preference for a Class C1 channel, Tyler believes that Option I may be the preferable arrangement of allotments. He also reiterates his willingness to reimburse Classic and Chisholm Trail for the reasonable costs associated with their respective channel changes. However, Tyler requests that the Commission affirm that Classic is only entitled to reimbursement for those expenses associated with its change of channel, not the change in power. Tyler also requests that the Commission affirm that FM 92 share in the required reimbursement to Chisholm Trail regardless of which allotment scheme is adopted. It contends that FM 92's proposed allotment of Channel 283C1 at Mooreland is interrelated with the allotment of Channel 259C1 at Tishomingo and thus it will benefit from the adoption of either Option I or Option II.

Discussion

14. Based on the record before us, we find that the public interest would be served by allotting Channel 283C1 to Mooreland, Oklahoma, as the community's first local aural service. Mooreland is an incorporated community, with a 1990 U.S. Census population of 1,157 people, its own local government, municipal services, schools and businesses. Channel 283C1 can be allotted to Mooreland in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction and without requiring any other changes to the Table of Allotments.¹⁶ We recognize that FM 92 requested that the channel be allotted to Mooreland with a site restriction of 29 kilometers southwest so that it could utilize an existing tower near Sharon, Oklahoma. However, the Commission generally allots channels with the least site restriction possible and does not protect a prospective applicant's desired transmitter site where the allotment will be available for application by multiple parties since we do not require the type of detailed technical antenna site showing required of an applicant and there is no guarantee that the petitioner will ultimately become the licensee. See, Stuart and Boone, Iowa, 5 FCC Rcd 4537 (1990), recon. den. 6 FCC Rcd 6036 (1991).

15. Based on this record we are unable to find that the proposed reallocation of Channel 259C3 from Tishomingo to Tuttle would result in a preferential arrangement of allotments and thus serve the public interest. Tyler filed his proposal pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹⁷ As pointed out in the Notice, Tyler requested the allotment at Tuttle in order to provide that community with its first local aural service. In recognition of the fact that Station KTSH was, at that time, the only operating station at Tishomingo, he was requested to submit further information to demonstrate that the public interest would be better served by providing a first local

¹⁶ The coordinates for Channel 283C1 at Mooreland are 36-26-18 NL; 99-12-18 WL.

¹⁷ See, Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

aural service at Tuttle than by retaining the same service at Tishomingo. In response, Tyler states that his proposal will further the Commission's allotment priorities by providing Tuttle with its first local aural service instead of Tishomingo having two such services, enable Station KTSH to provide service to a vastly larger number of people, that the status of Tuttle is not in question and that a Tuck showing of the community's independence from the Oklahoma City Urbanized Area is not required because the station will not cover 50% or more of the Urbanized Area with its 3.16 mV/m (70 dBu) signal. See, Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

16. Tyler argues that the issue of whether the public interest would be served by removing Tishomingo's sole aural service is moot because noncommercial educational Station KAZC is now operational and thus the community will continue to receive a local aural service. We disagree that this issue is moot. In Change of Community MO&O, *supra*, at 7097, the Commission stated that the public has a legitimate expectation that existing service, regardless of whether it is a transmission or reception service, will continue and that this expectation is a factor to be weighed independently against the benefits that may result from the reallocation. Tyler is correct that at the time the Commission granted Station KAZC's construction permit there was no requirement that a station operating within the reserved portion of the band provide any level of service to its community of license. *See*, fn. 9, *supra*. Therefore, where the only remaining station in a community is one which operates within the reserved portion of the FM band, the Commission cannot assume that the population will indeed retain a local transmission service.¹⁸ A staff engineering study has confirmed that Station KAZC, operating within the technical parameters set forth in its permit, does not encompass any portion of Tishomingo within its 70 dBu contour and only 23% of those people who receive service from Station KTSH will be within Station KAZC's 60 dBu contour. As such, we do not believe this to be a replacement for the removal of a Dole local service. It is irrelevant whether Station KAZC can locate its transmitter in the center of Tishomingo, as stated by Tyler. The transmitter site authorized in Station KAZC's construction permit reflects a site 17.6 kilometers (19.9 miles) southwest of Tishomingo, as requested by South Central. Therefore, we believe that Tyler's proposed reallocation of Channel 259C3 from Tishomingo to Tuttle remains a request to remove the community's sole local aural service and thus triggers the same allotment priority, that is, the provision of a first local aural service to either community.

17. In analyzing the proposed allotment of Channel 259C3 to Tishomingo or Tuttle, we find that neither allotment will provide any first or second fulltime aural reception service and both communities are considered to be well-served. Tishomingo, with a 1990 U.S. Census population of 3,116 people, receives service from eleven radio stations. Tuttle, with a smaller population of 2,807 people, receives service from twenty-six radio stations, with twenty of these stations placing a city-grade signal over the community. As the communities are approximately 95 miles apart, all 36,134 people who presently receive service from Station KTSH (60,243 people if Station KTSH were to

¹⁸ Pursuant to Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990), reception service provided by noncommercial educational stations operating on channels within the reserved portion of the band are considered in transmission service studies.

begin operating at its construction permit site) would lose service. Station KAZC provides service to only 8,333 people with no portion of Tishomingo receiving a 70 dBu city-grade signal. We recognize that if Channel 259C3 is reallocated to Tuttle as requested, Station KTSH will be able to provide service to 759,413 people. However, the determining factor in comparing competing proposals for a first local aural service is the size of the community of license, not the potential population within the projected 60 dBu contour. See, Sparta and Buckhead, GA, DA 00-2481, released November 3, 2000, 65 FR 69725, November 20, 2000, and Marks and Woodsville, FL, 12 FCC Rcd 11957 (1997) and cases cited therein. Further, all of the population which would receive service from a Tuttle station are already well-served. Therefore, based upon the above analysis, we find that Tyler has not presented a sufficiently compelling public interest benefit to warrant the removal of Tishomingo's sole local aural service and thus deprive the people of a service they have come to expect.

18. With this decision the issue of whether Woodward Station KWFX(FM)'s license should be modified from Channel 261C1 to either Channel 228A or Channel 292C1 is moot. Channel 283C1 can be allotted to Mooreland without requiring a change in the Woodward station's operating channel. In addition, Classic has stated its intention to operate on Channel 261C1 and has filed an application for a construction permit specifying the new channel, albeit it with less than Class C1 facilities. Therefore, any decision as to whether Station KWFX should be downgraded from its Class C1 status is more appropriately taken with regard to the processing of its pending application. Likewise, a decision on the pending investigation into the circumstances surrounding Station KTSH going off the air and Station KAZC going on the air also does not need to be reached in order to conclude this proceeding. Therefore, any decision concerning the actions of Station KTSH and/or Station KAZC will be decided in a separate action.

19. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 5, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Mooreland, Oklahoma	283C1

20. A filing window for Channel 283C1 at Mooreland, Oklahoma, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

21. IT IS FURTHER ORDERED, That the petition for rule making filed by Ralph Tyler (RM-9133) requesting the reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, the substitution of Channel 292C1 for Channel 261C1 at Woodward, Oklahoma, and the substitution of Channel 260C1 for Channel 259C1 at Alva, Oklahoma, IS DENIED.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

23. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**